

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, practices, and conduct of Pacific Bell Wireless LLC dba Cingular Wireless, U-3060, U-4135 and U-4314, and related entities (collectively "Cingular") to determine whether Cingular has violated the laws, rules and regulations of this State in its sale of cellular telephone equipment and service and its collection of an Early Termination Fee and other penalties from consumers.

Investigation 02-06-003
(Filed June 6, 2002)

**JOINT RULING OF ASSIGNED COMMISSIONER AND
ADMINISTRATIVE LAW JUDGE RESOLVING MOTIONS TO COMPEL
DISCOVERY (CPSD, AUGUST 13, 2002; UCAN, AUGUST 15, 2002)**

Pursuant to Rule 45(h) of the Commission's Rules of Practice and Procedure, this ruling resolves two pending motions to compel discovery, the August 13, 2002 motion filed by the Commission's Consumer Protection and Safety Division (CPSD) and the August 15 motion filed by Utility Consumers' Action Network (UCAN). The August 14 motion for a protective order filed by Telephia, Inc. (Telephia) will be addressed separately.

CPSD's Motion to Compel: In essence, CPSD's motion¹ requests a ruling affirming its right to discovery from Cingular Wireless (Cingular) without first

¹ Motion of Consumer Protection & Safety Division for Clarification of ALJ Vieth "Ruling Resolving July 29, 2002 Motion to Compel Discovery," And To Compel Immediate And Full Compliance With CPSD Data Requests Other DR 1 and 11.

executing a private, nondisclosure agreement. CPSD asserts that Cingular has refused to provide documents responsive to certain outstanding Data Requests (DRs) because Cingular claims those documents are confidential. CPSD expressly excludes DRs 1 and 11 from its motion since the documents responsive to these DRs are the subject of Telephia's motion and this ruling does not reach DRs 1 and 11.

With respect to all other outstanding DRs from CPSD to Cingular (i.e., where Cingular has agreed to produce responsive documents or where the August 8, 2002 Administrative Law Judge's Ruling directs Cingular to produce such documents), Cingular shall provide the documents to CPSD without further delay. Members of CPSD, like all other Commission employees, are bound by Pub. Util. Code § 583, which provides:

No information furnished to the commission by a public utility, or any business which is a subsidiary or affiliate of a public utility, or a corporation which holds a controlling interest in a public utility, except those matters specifically required to be open to public inspection by this part, shall be open to public inspection or made public except on order of the commission, or by the commission or a commissioner in the course of a hearing or proceeding. Any present or former officer or employee of the commission who divulges any such information is guilty of a misdemeanor. (Emphasis added.)

Furthermore, pursuant to Pub. Util. Code § 583 and Evid. Code § 1040 (concerning "official information") the Commission's General Order (GO) 66-C precludes public disclosure of such confidential information in response to Public Records Act Requests under the Government Code. Given these provisions, there is no need to require CPSD or other Commission staff to execute a nondisclosure agreement before it may obtain confidential information

from a public utility or other regulated entity and historically the Commission has not done so.²

UCAN's Motion to Compel: UCAN's motion³ states that UCAN and Cingular have been attempting to reach agreement on the terms of a nondisclosure agreement under which Cingular would produce discovery of an allegedly confidential nature but that the parties have reached impasse. UCAN has attached two versions of the nondisclosure agreement to its motion. One (Attachment A), which UCAN will agree to sign, contains the same provisions found in executed nondisclosure agreements used in litigation between UCAN and other affiliates of Cingular's corporate parent. UCAN has agreed to a further modification of this nondisclosure agreement to include a reference to pending litigation. The second (Attachment B), which Cingular insists upon, includes a provision purporting to bind UCAN to Pub. Util. Code § 583, including misdemeanor penalties for unauthorized disclosure. Section 583, by its express terms, applies to the Commission and its staff, not to a private party such as UCAN.

Cingular shall execute, without delay, the nondisclosure agreement appended as Attachment A to UCAN's motion (with the modifications UCAN has agreed to) and shall concurrently commence production of discovery.

² CPSD's motion cites several decisions in which the Commission declined to extend the reach of protective orders governing utility documents to Commission staff since Pub. Util. Code § 583 made it superfluous to do so. Protective orders and nondisclosure agreements are different vehicles, and we caution the parties not to confuse the two.

³ Utility Consumers' Action Network Motion to Compel Discovery From Cingular.

IT IS RULED that:

1. The August 13, 2002 Motion to Compel filed by Consumer Protection and Safety Division is granted, as discussed herein.
2. The July 15, 2002 Motion To Compel Discovery filed by Utility Consumers' Action Network is granted, as discussed herein.

Dated August 19, 2002, at San Francisco, California.

/s/ CARL WOOD

Carl Wood
Assigned Commissioner

/s/ JEAN VIETH

Jean Vieth
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Joint Ruling of Assigned Commissioner and Administrative Law Judge Resolving Motions to Compel Discovery (CPSD, August 13, 2002; UCAN, August 15, 2002) on all parties of record in this proceeding or their attorneys of record. In addition, service was also performed by electronic mail.

Dated August 19, 2002, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.